



DEPARTMENT OF JUSTICE
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January 4, 2011

Fredrick K. Campbell
425 West Capitol Avenue, Suite 1800
Little Rock, AR 72201-3525

David S. Swayze
800 King Street, Suite 203
Wilmington, DE 19801

RE: Proposed Affiliation of BCBS Inc. with Highmark, Inc.


Dear Rick and David:

Thank you for your joint letter dated December 29, 2010 which responds to some of the concerns raised in our November 19, 2010 letter. The additional information provided is informative and helpful, and we will take it under consideration.

You have requested the Department of Justice issue a letter to the effect that the affiliation is not a "conversion" within the meaning of *29 Del. C § 2531*. We are unable to do so at this time as the information provided thus far leaves us with a number of serious questions concerning this affiliation. In addition, as we have previously discussed, this office also has a common law responsibility to act as *parens patriae* for the beneficiaries of not-for-profits generally. We believe this doctrine and the conversion statute itself requires us to consider the impact of the proposed affiliation on the insurance beneficiaries.

Enclosed you will find a number of questions and document requests intended to illuminate our concerns. We appreciate the cooperation you have shown in this effort thus far and we look forward to your prompt responses. Please do not hesitate to contact me if you have any questions or concerns.

With best regards,


Joseph R. Biden, III
Attorney General

cc: Chief Deputy Attorney General Charles Butler

DELAWARE DEPARTMENT OF JUSTICE
REQUESTS FOR INFORMATION AND DOCUMENTS

INSTRUCTIONS AND DEFINITIONS

DEFINITIONS

Initially capitalized terms utilized herein and not otherwise defined shall have the meaning provided in the draft of the Business Affiliation Agreement, as provided to the Department of Justice on September 1, 2010 (the "Affiliation Agreement") by and between Highmark and BCBSD (each as defined in the Affiliation Agreement). Unless otherwise defined herein, the following terms used shall have these meanings:

1. "Document" shall mean all writings, written material, data or audio recordings, however created, produced or reproduced and wherever located, that are owned, possessed, controlled, in the custody of or accessible to you, or to which you have the right to own, possess, control, or to have custody, constructively or otherwise, and whether prepared or received by your company; and shall include, but is not limited to, letters, correspondence, e-mail, certificates, newspapers, logs, journals, accounts, schedules, contracts, prospectuses, marketing and advertising materials, agreements, drafts, reports, memoranda (including memoranda, recordings or notes of telephone conversations or messages, other conversations, discussions, meetings, or

conferences), telegrams, telexes, photographs, books, transcripts, records, computer databases, pamphlets, office communications (inter-office and intra-office), bulletins, manuals, minutes, marketing studies, statements, notebooks, forms, notices, tabulations, analyses, studies, microfilms, voice recordings, videotapes, tables or statistical or other data, notes or other tangible things, including copies if the copy bears any other marking or notation of any kind and each such document shall include all attachments, enclosures, and materials underlying, supporting or used in the preparation of any such document, and other documents that relate or refer to each such document. Any "document" that is requested that is available in printed and electronic format shall be produced in both formats. All document data that is in electronic format shall be produced in its native format, along with a written statement describing what information is included in that database, naming the native format and the software program used to enter and record the data, including the name of the software manufacturer, software release date and version.

2. "Native Format" shall mean and refer to the default format of a data file created by its associated software program, *i.e.*, for Microsoft Excel, the native format is ".xls" and for Microsoft Word, the native format is ".doc."

3. The terms “you” and “your” shall mean and include: Highmark and BCBSD and, as applicable, their respective employees, agents, successors, assigns, subsidiaries and affiliates.

4. “Any” or “all” shall mean each and every.

5. “And” and “or” shall mean and/or so that they both have conjunctive and disjunctive meaning such as to make them terms of inclusion rather than terms of exclusion.

6. The term “refer or relate to” or “referring or relating to” shall mean to make a statement about, embody, discuss, describe, reflect, identify, deal with, consist of, establish, comprise, list, or any way pertain, in whole or in part, to the subject of the document request.

7. “Identify” or “Identity” shall mean the following

a. when used in reference to a natural person, state:

- i. the person’s full name
- ii. the person’s title and employer or contractor, including whether or not the person is a notary public;
- iii. the person’s present or last known residential and business address;
- iv. the person’s present or last known residential and business telephone number;

- v. the person's present electronic email address;
- vi. when used in reference to a legal entity, such as a corporation or partnership, shall state:
 - 1. the organization's full name, trade names and dbas, if any;
 - 2. the address and telephone number of its principal place of business and any business locations in the State of Delaware; and
 - 3. the names and titles of the entity's officers, directors, managing agents or employees.
- vii. When used in reference to a document or documentary material shall state
 - 1. the type of document (*e.g.*, letter, memorandum, print-out, report, newspaper, etc.)
 - 2. the title and date, if any, of the document;
 - 3. the author's name and address;
 - 4. the addressee's name and address;
 - 5. a brief description of the document's contents;
 - 6. the present location of the document; and
 - 7. the name and address of the person or persons

having custody over the document.

8. Whenever appropriate, the singular form of a word should be interpreted in the plural, and the plural form should be interpreted in the singular. Further, the masculine and the feminine and the neuter should be interpreted to refer to the other, as the context requires.

INSTRUCTIONS

1. For any response called for by this Request that you refuse to provide based on a claim of privilege or for any document that is no longer in your possession, custody, or control, (or in the possession, custody or control of your accountants, consultants, attorneys or other agents wherever located), identify each such document by date, author, recipient, title of such persons, person who has custody of the document, subject matter of document, reason for not producing it, and the identity of each person having knowledge of the factual basis, if any, on which the objection or claim of privilege is asserted.

2. Unless otherwise indicated, the relevant time period for each request shall be January 1, 2006 through the present, and shall include all Documents and information created or prepared during that period, or referring or relating to that period, regardless of when the Document or

information was created or generated.

3. All responses shall be provided along with an affidavit of the persons responsible for compiling the response. The affidavit must state that the documents represent a complete, truthful and accurate response to this request. The affidavit must also authenticate all Documents provided in response to the request.

4. In each instance in which a Document is produced in response to a request, the current edition should be produced together with all earlier editions, or predecessor Documents during the relevant time period, even though the title of earlier Documents may differ from current versions.

5. The requests call for all responsive Documents and information in your possession, custody or control without regard to the person or persons by whom or for whom the Documents were prepared (*e.g.*, your employees, distributors or dealers, competitors, or others).

6. If any responsive Document was, but no longer is, in your possession, custody or control or subject to your control, identify the Document by its author(s), recipient(s) and subject matter, and state whether the Document is lost, has been destroyed, or has been transferred to others. If the responsive Document has been transferred to others, identify the transferee(s).

7. If the Document is no longer in existence, in addition to providing the information indicated above, state on whose instructions the Document was destroyed or otherwise disposed of, and the date and manner of the disposal.

8. Electronically stored information shall be produced in the form or forms in which it was ordinarily maintained (*i.e.*, in “native format”). Documents that exist only in paper form are to be scanned and produced in electronic format as searchable TIFF images with corresponding Summation load file(s).

9. Documents shall be produced in the order in which they were maintained in your files, in (or identified with) copies of their original file folders, labeled with the folder’s original file labels. No portion of any Document may be masked and the entire Document shall be produced. All attachments to responsive Documents shall be produced attached to the responsive Documents. A key to all abbreviations used in Documents shall be provided and be attached to the appropriate Documents.

10. Every Document produced shall be identified with the specific document request in response to which the Document is being produced.

11. This request is continuing in nature so as to require supplementary responses if you obtain further responsive Documents or information.

12. Unless otherwise indicated, documents to be produced pursuant to this request include each and every document prepared, sent, dated, received, in effect, or which otherwise came into existence during the period from January 1, 2006 to the date of the production of the documents.

13. Documents to be produced shall be originals unless otherwise indicated. If the "original" is a copy, that copy should be produced as the original. You should retain a copy of any and all documents produced in response to this request. Documents produced will not be returned to you.

REQUESTS

1. Identify and produce all documents referring or relating to historical economic data supporting the propriety of the conversion, including a copy of the 2008 report prepared by Deloitte, LLP referenced in the October 7, 2010 letter from David Swayze to Ian McConnel.

2. Identify and produce all documents referring or relating to BCBSD's reserves and Highmark's intentions with respect to disposition of the BCBSD reserves.

3. Identify and produce all documents referring or relating to due diligence conducted by either Highmark, BCBSD or their agents or advisors, in connection with the proposed Affiliation, including:

- a. Minutes of meetings of the BCBSD and Highmark Boards of Directors relating to the Affiliation.
 - b. Minutes of meetings of the BCBSD Board of Directors regarding the need to enter an affiliation (or similar) transaction, including minutes of meetings where other potential partners were considered or discussed.
4. Identify and describe all members of the BCBSD board of directors who voted on the question of whether to enter into the Affiliation with Highmark.
5. Identify and describe BCBSD's intentions with respect to the Line of Credit that Highmark intends to provide to BCBSD in connection with the Affiliation, and explain why BCBSD needs a Line of Credit to complete the transition to Highmark's systems.
6. Identify and describe Highmark and BCBSD's intentions or plans to maintain BCBSD's not-for-profit purpose after the closing of the Affiliation, and identify and describe any provisions in the BCBSD-Highmark bylaws that are consistent with this objective.
7. Identify, describe and produce all property assessments, appraisals and valuations that have been conducted or will be conducted either by BCBSD or Highmark in connection with the Affiliation.

8. Identify and describe any present or anticipated pre or post-Affiliation employment restructuring plans, including but not limited to any intention of Highmark to outsource jobs currently held by BCBSD employees in Delaware overseas or to a State other than Delaware, or any present or anticipated future intention to eliminate such positions.

9. Explain the characterization of the BCBSD-Highmark post-Affiliation relationship in the transaction documents as a “joint venture”.

10. Identify and describe all provisions of the Affiliation Agreement relating to BCBSD’s reserves and the ability of BCBSD or Highmark to transfer or dispose of the reserves.

11. Explain whether and how a future decision by Highmark to convert to for-profit status would potentially trigger a disaffiliation, and identify and describe all provisions in the Affiliation Agreement and other transactional documents relating to BCBSD’s ability to obtain its license back from Highmark in the event of a disaffiliation.

12. Identify and describe all compensation or incentives provided or promised to BCBSD officers, directors, or employees as a result of the Affiliation, including but not limited to:

- a. stock options in any Highmark subsidiary
- b. pension, retirement and profit-sharing plans

- c. performance bonuses
- d. corporate loans
- e. golden parachute provisions
- f. executive salaries
- g. side letters and arrangements for officers, directors and employees.

13. Identify and describe whether and how the cost savings resulting from the “economies of scale” expected to result from the Affiliation will be passed on to BCBSD or Highmark customers.

14. Explain your contention that BCBSD is too small as a standalone entity to function in the current health insurance market and identify, describe and produce all documents relating to this contention.

15. Identify and describe all potential affiliation (or merger, joint venture or other similar transaction) partners considered by BCBSD after the disaffiliation from CareFirst, and describe the process utilized by BCBSD to consider any potential affiliation (or other similar transaction) partners. Produce all documents relating to this request.